

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

<b>JOHNNY POTTS and JANICE POTTS,</b>	§	
<b>Plaintiffs,</b>	§	
<b>v.</b>	§	<b>Civil Action No.</b>
		<b>3:06-cv-00124-WHA-CSC</b>
<b>DYNCORP INTERNATIONAL LLC,</b>	§	
<b>JAMES McCANTS, et al.,</b>	§	
<b>Defendants.</b>		

**DEFENDANT DYNCORP INTERNATIONAL LLC’S  
MOTION TO AMEND ANSWER**

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COMES NOW defendant DynCorp International LLC (“DynCorp”) and, pursuant to Rule 15(a) of the *Federal Rules of Civil Procedure*, moves the Court grant DynCorp leave to amend its answer to the plaintiffs’ Complaint to include the additional affirmative defense of lack of subject matter jurisdiction of this Court (Amended Answer attached).

Rule 15(a) requires that leave to amend “be freely given when justice so requires.” *Fed. R. Civ. P.* 15(a). The amendment relates to the jurisdiction of this Court over the subject matter of the suit and, according to Rule 12(h)(3) of the Federal Rules of Civil Procedure, the subject matter jurisdiction of a federal court may be raised at any time. *See Fed. R. Civ. P.* 12(h)(3) (“Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”). Furthermore, this motion to amend meets the time requirements set out in the scheduling

order of the Court, dated March 28, 2006, which requires that all motions to amend the pleadings must be made prior to September 15, 2006.

WHEREFORE, defendant DynCorp International LLC prays that this Court will allow it leave to amend its answer to plaintiffs' Complaint to add the affirmative defense of lack of jurisdiction over the subject matter of this suit.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on September 11, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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